

## 48A C.J.S. Judges § 190

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### VII. Compensation and Fees

#### A. General Considerations

## § 190. Right to compensation

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  [22\(1\)](#), [22\(9\)](#)

**The right of a judge to receive compensation depends on the existence of the office, and if the compensation is fixed by law, the right does not depend on the performance of official duties.**

The right to receive compensation depends primarily on the existence of the office,<sup>1</sup> and a judge is entitled to draw the salary so long as the judge continues to hold office.<sup>2</sup> The State's obligation to pay a specific salary extends to the end of each term of office, and there is no promise express or implied the State will continue to pay an existing salary beyond the end of a term.<sup>3</sup> If the office is legally abolished, the right to receive compensation thereupon ceases.<sup>4</sup> However, if a judge is continued in office beyond the expiration of the term for which the judge was elected pending the inauguration of a new judicial system or the appointment of a successor, the judge's salary may continue as formerly during the entire time during which he or she performs the duties of the office.<sup>5</sup> A judge whose election is certified after recount proceedings is entitled to back compensation measured from the beginning of the judge's term.<sup>6</sup> Since a judge is a public officer, there may be no setoff of any income earned during the period of the recount proceedings against the salary owed.<sup>7</sup>

Since the compensation is an incident to the office and is not measured by the services the judge performs,<sup>8</sup> where the law provides that a judge shall receive a fixed compensation, the judge's right thereto is not dependent on the performance of his or her official duties during the salary period<sup>9</sup> or on the manner in which the judge discharges his or her duties<sup>10</sup> provided the judge's conduct does not amount to an abandonment of,<sup>11</sup> or forfeiture of, or nonfeasance in<sup>12</sup> the office.

The judge cannot be deprived of a salary even if the services rendered or to be rendered are decreased<sup>13</sup> as where prevented by temporary incapacity, such as sickness, from performing the duties of the office.<sup>14</sup> However, by force of statute, a deduction

may be made from the salary of a judge during the period for which the judge is selected by reason of neglecting the duties of the office.<sup>15</sup>

***Judge pro tempore.***

One who serves as a judge pro tempore under the provisions of the statute governing circumstances when attorneys may elect one of their number to hold court is not entitled to compensation.<sup>16</sup>

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Footnotes

- 1 Neb.—Garrotto v. McManus, 185 Neb. 644, 177 N.W.2d 570 (1970).  
S.C.—Gaffney v. Mallory, 186 S.C. 337, 195 S.E. 840 (1938).
- 2 Wis.—State ex rel. Godfrey v. Gollmar, 76 Wis. 2d 417, 251 N.W.2d 438 (1977).  
**Salary for life**  
By guaranteeing federal judges life tenure, the Federal Constitution permits federal judges to draw a salary for life simply by continuing to serve.  
U.S.—U.S. v. Hatter, 532 U.S. 557, 121 S. Ct. 1782, 149 L. Ed. 2d 820 (2001).
- 3 Cal.—In re Marriage of Alarcon, 149 Cal. App. 3d 544, 196 Cal. Rptr. 887 (4th Dist. 1983).
- 4 N.C.—Brown v. Board of Com'rs of Richmond County, 223 N.C. 744, 28 S.E.2d 104 (1943).
- 5 S.C.—Gaffney v. Mallory, 186 S.C. 337, 195 S.E. 840 (1938).
- 6 Pa.—Reed v. Sloan, 25 Pa. Commw. 570, 360 A.2d 767 (1976), judgment aff'd, 475 Pa. 570, 381 A.2d 421 (1977).
- 7 Pa.—Reed v. Sloan, 25 Pa. Commw. 570, 360 A.2d 767 (1976), judgment aff'd, 475 Pa. 570, 381 A.2d 421 (1977).
- 8 Pa.—Reed v. Sloan, 25 Pa. Commw. 570, 360 A.2d 767 (1976), judgment aff'd, 475 Pa. 570, 381 A.2d 421 (1977).
- 9 W. Va.—Oakley v. Gainer, 175 W. Va. 115, 331 S.E.2d 846 (1985) (abrogated on other grounds by, Harshbarger v. Gainer, 184 W. Va. 656, 403 S.E.2d 399 (1991)).
- 10 N.Y.—Goetting v. City of New York, 29 Misc. 717, 61 N.Y.S. 334 (Sup 1899).  
Pa.—Reed v. Sloan, 25 Pa. Commw. 570, 360 A.2d 767 (1976), judgment aff'd, 475 Pa. 570, 381 A.2d 421 (1977).
- 11 Pa.—McNair v. Allegheny County, 328 Pa. 3, 195 A. 118 (1937).
- 12 Pa.—Reed v. Sloan, 25 Pa. Commw. 570, 360 A.2d 767 (1976), judgment aff'd, 475 Pa. 570, 381 A.2d 421 (1977).
- 13 N.Y.—People ex rel. Noble v. Mitchel, 220 N.Y. 86, 115 N.E. 271 (1917).
- 14 N.Y.—Bookhout v. Levitt, 43 N.Y.2d 612, 403 N.Y.S.2d 200, 374 N.E.2d 111 (1978).

15 Ala.—[White v. State](#), 123 Ala. 577, 26 So. 343 (1899).

16 Tenn.—[Waters v. State ex rel. Schmutzer](#), 583 S.W.2d 756 (Tenn. 1979).

Judge pro tempore as distinguished from special judge, see § 342.

As to compensation of special judges, see § 347.

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